H-2395.2

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**SUBSTITUTE HOUSE BILL 1868**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Riccelli, Volz, Berry, Fitzgibbon, Shewmake, Bateman, Berg, Bronoske, Callan, Cody, Davis, Duerr, Goodman, Gregerson, J. Johnson, Kirby, Macri, Peterson, Ramel, Ramos, Ryu, Santos, Sells, Senn, Sullivan, Simmons, Chopp, Bergquist, Graham, Valdez, Wicks, Dolan, Pollet, Ortiz-Self, Paul, Stonier, Donaghy, Ormsby, Slatter, Hackney, Taylor, Harris-Talley, Kloba, and Frame)

AN ACT Relating to improving worker safety and patient care in health care facilities by addressing staffing needs, overtime, meal and rest breaks, and enforcement; amending RCW 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a new chapter to Title 49 RCW; recodifying RCW 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; repealing 2017 c 249 s 4 (uncodified); prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 70.41.410 and 2008 c 47 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section ((~~and~~)), RCW 70.41.420 and 70.41.425 (as recodified by this act), and section 5 of this act unless the context clearly requires otherwise.

(1) "Department" means the department of labor and industries.

(2) "Direct care nursing assistant-certified" means an individual certified under chapter 18.88A RCW who provides direct care to patients.

(3) "Direct care registered nurse" means an individual licensed as a nurse under chapter 18.79 RCW who provides direct care to patients.

(4) "Hospital" has the same meaning as defined in RCW 70.41.020, and also includes state hospitals as defined in RCW 72.23.010.

((~~(2)~~)) (5) "Hospital staffing committee" means the committee established by a hospital under RCW 70.41.420 (as recodified by this act).

(6) "Intensity" means the level of patient need for nursing care, as determined by the nursing assessment.

((~~(3)~~)) (7) "Nursing and ancillary health care personnel" means ((~~registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care~~)) a person who is providing direct care or supportive services to patients.

((~~(4) "Nurse staffing committee" means the committee established by a hospital under RCW 70.41.420.~~

~~(5)~~)) (8) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.

((~~(6)~~)) (9) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(10) "Skill mix" means the experience of, and number and relative percentages of ((~~registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel~~)), nursing and ancillary health personnel.

(11) "Unforeseeable emergent circumstance" means:

(a) Any unforeseen national, state, or municipal emergency; or

(b) When a hospital disaster plan is activated.

NEW SECTION. **Sec.**  (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Department" means the department of labor and industries.

(b) "Direct care nursing assistant-certified" means an individual certified under chapter 18.88A RCW who provides direct care to patients.

(c) "Direct care registered nurse" means an individual licensed as a nurse under chapter 18.79 RCW who provides direct care to patients.

(d) "Hospital" has the same meaning as defined in RCW 70.41.020.

(e) "Hospital staffing committee" means the committee established by a hospital under RCW 70.41.420 (as recodified by this act).

(f) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.

(2)(a) A hospital shall comply with minimum staffing standards in accordance with this section.

(b) The department shall enforce compliance with this section under sections 10 through 12 of this act.

(3) Direct care registered nurses shall not be assigned more patients than the following for any shift:

(a) Emergency department: One direct care registered nurse to three nontrauma or noncritical care patients and one direct care registered nurse to one trauma or critical care patient;

(b) Intensive care unit, such as critical care unit, special care unit, coronary care unit, pediatric intensive care, neonatal intensive care, neurological critical care unit, or a burn unit: One direct care registered nurse to two patients or one direct care registered nurse to one patient depending on the stability of the patient as assessed by the direct care registered nurse on the unit;

(c) Labor and delivery: One direct care registered nurse to two patients and one direct care registered nurse to one patient for active labor and in all stages of labor for any patients with complications;

(d) Postpartum, antepartum, and well-baby nursery: One direct care registered nurse to six patients in postpartum, antepartum, and well-baby nursery. In this context, the mother and the baby are each counted as separate patients. This would mean, for example, one direct care registered nurse to three mother-baby couplets;

(e) Operating room: One direct care registered nurse to one patient;

(f) Oncology: One direct care registered nurse to four patients;

(g) Postanesthesia care unit: One direct care registered nurse to two patients;

(h) Progressive care unit, intensive specialty care unit, or stepdown unit: One direct care registered nurse to three patients;

(i) Medical-surgical unit: One direct care registered nurse to four patients;

(j) Telemetry unit: One direct care registered nurse to three patients;

(k) Psychiatric unit: One direct care registered nurse to six patients;

(l) Pediatrics: One direct care registered nurse to three patients.

(4) Direct care nursing assistants-certified shall not be assigned more patients than the following for any shift:

(a) Intensive care unit, such as critical care unit, special care unit, coronary care unit, pediatric intensive care, neonatal intensive care, neurological critical care unit, or a burn unit: One direct care nursing assistant-certified to eight patients;

(b) Cardiac unit: One direct care nursing assistant-certified to four patients;

(c) Labor and delivery: One direct care nursing assistant-certified to eight patients and one direct care nursing assistant-certified to four patients for active labor and in all stages of labor for any patients with complications;

(d) Oncology: One direct care nursing assistant-certified to seven patients;

(e) Postanesthesia care unit: One direct care nursing assistant-certified to eight patients;

(f) Progressive care unit, intensive specialty care unit, or stepdown unit: One direct care nursing assistant-certified to eight patients;

(g) Medical-surgical unit: One direct care nursing assistant-certified to eight patients;

(h) Telemetry unit: One direct care nursing assistant-certified to eight patients;

(i) Psychiatric unit: One direct care nursing assistant-certified to seven patients;

(j) Pediatrics: One direct care nursing assistant-certified to 13 patients;

(k) Emergency department: One direct care nursing assistant-certified to seven patients;

(l) Telesitting unit: One direct care nursing assistant-certified to eight patients;

(m) Cardiac monitoring unit: One direct care nursing assistant-certified to 50 patients.

(5)(a) The personnel assignment limits established in this section are based on the type of care provided in these patient care units, regardless of the specific name or reference the hospital calls these units.

(b) The personnel assignment limits established in this section represent the maximum number of patients to which a direct care registered nurse or direct care nursing assistant-certified may be assigned at all points during a shift.

(c) A hospital may not average the number of patients and the total number of direct care registered nurses and direct care nursing assistants-certified assigned to patients in a unit during any one shift or over any period of time, in order to meet the personnel assignment limits established in this section.

(6) Nothing in this section precludes a hospital from assigning fewer patients to a direct care registered nurse or direct care nursing assistant-certified than the limits established in this section.

(7) The personnel assignment limits established in this section do not decrease any nurse-to-patient staffing levels in effect pursuant to a collective bargaining agreement or hospital's staffing plan in effect on the effective date of this section.

(8) A direct care registered nurse or direct care nursing assistant-certified may not be assigned to a nursing unit or clinical area unless that nurse has first received orientation in that clinical area sufficient to provide competent care to patients in that area and has demonstrated current competence in providing care in that area.

(9)(a) Except as provided in (b) of this subsection, a hospital shall develop and implement minimum staffing standards into its staffing plan required under RCW 70.41.420 (as recodified by this act), no later than two years after the effective date of this section.

(b) The following hospitals shall develop and implement minimum staffing standards into their staffing plan required under RCW 70.41.420 (as recodified by this act) no later than four years after the effective date of this section:

(i) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(ii) Hospitals with fewer than 25 acute care beds in operation; and

(iii) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than 150 acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision.

**Sec.**  RCW 70.41.420 and 2017 c 249 s 2 are each amended to read as follows:

(1) By September 1, ((~~2008~~)) 2023, each hospital shall establish a ((~~nurse~~)) hospital staffing committee, either by creating a new committee or assigning the functions of ((~~a~~)) an existing nurse staffing committee to ((~~an existing~~)) a hospital staffing committee.

(a) At least ((~~one-half~~)) 50 percent of the members of the ((~~nurse~~)) hospital staffing committee shall be ((~~registered nurses~~)) nursing and ancillary health care personnel, who are nonsupervisory and nonmanagerial, currently providing direct patient care ((~~and up to one-half of the members shall be determined by the hospital administration~~)). The selection of the ((~~registered nurses providing direct patient care~~)) nursing and ancillary health care personnel shall be according to the collective bargaining ((~~agreement~~)) representative or representatives if there is one ((~~in effect~~)) or more at the hospital. If there is no ((~~applicable~~)) collective bargaining ((~~agreement~~)) representative, the members of the ((~~nurse~~)) hospital staffing committee who are ((~~registered nurses~~)) nursing and ancillary health care personnel providing direct patient care shall be selected by their peers.

(b) Up to 50 percent of the members of the hospital staffing committee shall be determined by the hospital administration and shall include but not be limited to the chief financial officer, the chief nursing officers, and patient care unit directors or managers or their designees.

(2) Participation in the ((~~nurse~~)) hospital staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. ((~~Nurse~~)) Hospital staffing committee members shall be relieved of all other work duties during meetings of the committee. Additional staffing relief must be provided if necessary to ensure committee members are able to attend hospital staffing committee meetings.

(3) Primary responsibilities of the ((~~nurse~~)) hospital staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based ((~~nurse~~)) staffing plan, in compliance with the standards established in section 2 of this act and based on the needs of patients, to be used as the primary component of the staffing budget. The hospital staffing committee shall use a uniform format or form, created by the department, for complying with the requirement to submit the annual staffing plan. The uniform format or form must allow patients and the public to clearly understand and compare staffing patterns and actual levels of staffing across facilities. Hospitals may include a description of additional resources available to support unit-level patient care and a description of the hospital, including the size and type of facility. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Level of intensity of all patients and nature of the care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing personnel providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;

(vii) ((~~Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;~~

~~(viii)~~)) Availability of other personnel supporting nursing services on the unit; and

((~~(ix) Strategies to enable registered nurses to take meal and rest breaks as required by law or~~)) (viii) Ability to comply with the terms of an applicable collective bargaining agreement, if any, ((~~between the hospital and a representative of the nursing staff~~)) and relevant state and federal laws and rules, including those regarding meal and rest breaks and use of overtime and on-call shifts;

(b) Semiannual review of the staffing plan against the ability to meet staffing standards established under section 2 of this act, patient need, and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing variations or ((~~concerns~~)) complaints presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources must be taken into account in the development of the ((~~nurse~~)) staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement((~~, if any, between the hospital and a representative of the nursing staff~~)).

(6)(a) The committee ((~~will~~)) shall produce the hospital's annual ((~~nurse~~)) staffing plan. If this staffing plan is not adopted by consensus of the hospital((~~, the~~)) staffing committee, the prior annual staffing plan remains in effect and the hospital is subject to daily fines of $10,000 for hospitals licensed under chapter 70.41 RCW or daily fines of $100 for: (i) Hospitals certified as critical access hospitals; (ii) hospitals with fewer than 25 acute care beds in operation; and (iii) hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than 150 acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision until adoption of a new annual staffing plan by consensus of the committee.

(b) The chief executive officer shall provide ((~~a written explanation of the reasons why the plan was not adopted to the committee~~)) feedback to the hospital staffing committee on a semiannual basis, prior to the committee's semiannual review and adoption of an annual staffing plan. The ((~~chief executive officer~~)) feedback must ((~~then either~~)): ((~~(a)~~)) (i) Identify those elements of the ((~~proposed plan being changed prior to adoption of the plan by the hospital or (b) prepare an alternate annual staffing plan that must be adopted by the hospital~~)) staffing plan the chief executive officer requests changes to; or (ii) provide a status report on implementation of the staffing plan including nursing sensitive quality indicators collected by the hospital, patient surveys, and recruitment and retention efforts.

(c) Beginning ((~~January 1, 2019~~)) June 1, 2023, each hospital shall submit its staffing plan to the department and thereafter on an annual basis and at any time in between that the plan is updated.

(7) Beginning ((~~January 1, 2019~~)) June 1, 2023, each hospital shall implement the staffing plan and assign nursing personnel to each patient care unit in accordance with the plan.

(a) A registered nurse, ancillary health care personnel, collective bargaining representative, patient, or other individual may report to the staffing committee any variations where the ((~~nurse~~)) personnel assignment in a patient care unit is not in accordance with the adopted staffing plan and may make a complaint to the committee based on the variations.

(b) Shift-to-shift adjustments in staffing levels required by the plan may be made by the appropriate hospital personnel overseeing patient care operations. If a registered nurse or nursing assistant-certified on a patient care unit objects to a shift-to-shift adjustment, the registered nurse or nursing assistant-certified may submit the complaint to the staffing committee.

(c) Staffing committees shall develop a process to examine and respond to data submitted under (a) and (b) of this subsection, including the ability to determine if a specific complaint is resolved or dismissing a complaint based on unsubstantiated data. All complaints submitted to the hospital staffing committee must be reviewed, regardless of what format the complainant uses to submit the complaint.

(8) Each hospital shall post, in a public area on each patient care unit, the ((~~nurse~~)) staffing plan and the ((~~nurse~~)) staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(9) A hospital may not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the ((~~nurse~~)) staffing committee; or

(b) An employee, patient, or other individual who notifies the ((~~nurse~~)) staffing committee or the hospital administration of his or her concerns on nurse or ancillary health care personnel staffing.

(10) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having ((~~nurse~~)) hospital staffing committees work by video conference, telephone, or email.

(11) The hospital staffing committee shall file with the department a charter that must include, but is not limited to:

(a) Roles, responsibilities, and processes by which the hospital staffing committee functions, including processes to ensure adequate quorum and ability of committee members to attend;

(b) Schedule for monthly meetings with more frequent meetings as needed that ensures committee members have 30-days notice of meetings;

(c) Processes by which all staffing complaints will be reviewed, noting the date received as well as initial, contingent, and final disposition of complaints and corrective action plan where applicable;

(d) Processes by which complaints will be resolved within 60 days of receipt and processes to ensure the complainant receives a letter stating the outcome of the complaint;

(e) Processes for attendance by any nurse, ancillary health care personnel, collective bargaining representative, patient, or member of the public who is involved in a complaint;

(f) Processes for the hospital staffing committee to conduct quarterly reviews of staff turnover rates including new hire turnover rates during first year of employment and hospital plans regarding workforce development;

(g) Standards for hospital staffing committee approval of meeting documentation including meeting minutes, attendance, and actions taken; and

(h) Policies for retention of meeting documentation for a minimum of three years and consistent with each hospital's document retention policies.

**Sec.**  RCW 70.41.425 and 2017 c 249 s 3 are each amended to read as follows:

(1)(a) The department shall investigate a complaint submitted under this section for violation of RCW 70.41.420 (as recodified by this act) or section 2 of this act following receipt of a complaint with documented evidence of failure to:

(i) Form or establish a hospital staffing committee;

(ii) Conduct a semiannual review of a ((~~nurse~~)) staffing plan;

(iii) Submit a ((~~nurse~~)) staffing plan on an annual basis and any updates; or

(iv)((~~(A)~~)) Follow the ((~~nursing~~)) personnel assignments in a patient care unit in violation of section 2 of this act, RCW 70.41.420(7)(a) (as recodified by this act), or shift-to-shift adjustments in staffing levels in violation of RCW 70.41.420(7)(b) (as recodified by this act).

((~~(B) The department may only investigate a complaint under this subsection (1)(a)(iv) after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations of RCW 70.41.420(7) (a) or (b), that were submitted to the nurse staffing committee excluding complaints determined by the nurse staffing committee to be resolved or dismissed. The submitted evidence must include the aggregate data contained in the complaints submitted to the hospital's nurse staffing committee that indicate a continuing pattern of unresolved violations for a minimum sixty-day continuous period leading up to receipt of the complaint by the department.~~

~~(C) The department may not investigate a complaint under this subsection (1)(a)(iv) in the event of unforeseeable emergency circumstances or if the hospital, after consultation with the nurse staffing committee, documents it has made reasonable efforts to obtain staffing to meet required assignments but has been unable to do so.~~))

(b) After an investigation conducted under (a) of this subsection, if the department determines that there has been a violation, the department shall require the hospital to submit a corrective plan of action within ((~~forty-five~~)) 45 days of the presentation of findings from the department to the hospital.

(c) Hospitals will not be found in violation of section 2 of this act or RCW 70.41.420 (as recodified by this act) if it has been determined, following an investigation, that:

(i) There were unforeseeable emergent circumstances; or

(ii) The hospital, after consultation with the hospital staffing committee, documents that the hospital has made reasonable efforts to obtain and retain staffing to meet required personnel assignments but has been unable to do so.

(d) No later than 30 days after a hospital deviates from its staffing plan as adopted by the staffing committee under RCW 70.41.420 (as recodified by this act), the hospital incident command shall report to the cochairs of the hospital staffing committee an assessment of the staffing needs arising from the unforeseeable emergent circumstance and the hospital's plan to address those identified staffing needs. Upon receipt of the report, the hospital staffing committee shall convene to develop a contingency staffing plan to address the needs arising from the unforeseeable emergent circumstance. The hospital's deviation from its staffing plan may not be in effect for more than 90 days without the approval of the hospital staffing committee.

(2) In the event that a hospital fails to submit or submits but fails to follow such a corrective plan of action in response to a violation or violations found by the department based on a complaint filed pursuant to subsection (1) of this section, the department may impose, for all violations asserted against a hospital at any time, a civil penalty of ((~~one hundred dollars~~)) $10,000 per day for hospitals licensed under chapter 70.41 RCW, or $100 per day for: (a) Hospitals certified as critical access hospitals; (b) hospitals with fewer than 25 acute care beds in operation; and (c) hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than 150 acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision. Civil penalties apply until the hospital submits ((~~or begins to follow~~)) a corrective plan of action ((~~or takes other action agreed to~~)) that has been approved by the department and follows the corrective plan of action for 90 days. Once the approved corrective action plan has been followed by the hospital for 90 days, the department may reduce the accumulated fine. The fine shall continue to accumulate until the 90 days has passed. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

(3) The department shall maintain for public inspection records of any civil ((~~penalties,~~)) penalty and administrative actions((~~, or license suspensions or revocations~~)) imposed on hospitals under this section. In addition, the department must report violations of this section on its website.

(4) ((~~For purposes of this section, "unforeseeable emergency circumstance" means:~~

~~(a) Any unforeseen national, state, or municipal emergency;~~

~~(b) When a hospital disaster plan is activated;~~

~~(c) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or~~

~~(d) When a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.~~

~~(5)~~)) Nothing in this section shall be construed to preclude the ability to otherwise submit a complaint to the department for failure to follow RCW 70.41.420 (as recodified by this act).

((~~(6) The department shall submit a report to the legislature on December 31, 2020. This report shall include the number of complaints submitted to the department under this section, the disposition of these complaints, the number of investigations conducted, the associated costs for complaint investigations, and recommendations for any needed statutory changes. The department shall also project, based on experience, the impact, if any, on hospital licensing fees over the next four years. Prior to the submission of the report, the secretary shall convene a stakeholder group consisting of the Washington state hospital association, the Washington state nurses association, service employees international union healthcare 1199NW, and united food and commercial workers 21. The stakeholder group shall review the report prior to its submission to review findings and jointly develop any legislative recommendations to be included in the report.~~

~~(7) No fees shall be increased to implement chapter 249, Laws of 2017 prior to July 1, 2021.~~))

NEW SECTION. **Sec.**  (1)(a) The department shall review each hospital staffing plan submitted by a hospital to ensure it is received by the appropriate deadline and is completed on the department-issued staffing plan form.

(b) The hospital must complete all portions of the staffing plan form. The department may determine that a hospital has failed to timely submit its staffing plan if the staffing plan form is incomplete.

(c) Failure to submit the staffing plan by the appropriate deadline will result in a violation and civil penalty of $25,000 issued by the department. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

(2) Failure to submit a staffing committee charter to the department by the appropriate deadline will result in a violation and a civil penalty of $25,000 issued by the department. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

(3) The department must post on its website:

(a) Hospital staffing plans;

(b) Staffing committee charters; and

(c) Violations of this section.

**Sec.**  RCW 49.12.480 and 2019 c 296 s 1 are each amended to read as follows:

(1) An employer shall provide employees with meal and rest periods as required by law, subject to the following:

(a) Rest periods must be scheduled at any point during each work period during which the employee is required to receive a rest period;

(b) Employers must provide employees with uninterrupted meal and rest breaks. This subsection (1)(b) does not apply in the case of((~~:~~

~~(i) An~~)) an unforeseeable emergent circumstance, as defined in RCW 49.28.130((~~; or~~

~~(ii) A clinical circumstance, as determined by the employee, employer, or employer's designee, that may lead to a significant adverse effect on the patient's condition:~~

~~(A) Without the knowledge, specific skill, or ability of the employee on break; or~~

~~(B) Due to an unforeseen or unavoidable event relating to patient care delivery requiring immediate action that could not be planned for by an employer;~~

~~(c) For any rest break that is interrupted before ten complete minutes by an employer or employer's designee under the provisions of (b)(ii) of this subsection, the employee must be given an additional ten minute uninterrupted rest break at the earliest reasonable time during the work period during which the employee is required to receive a rest period. If the elements of this subsection are met, a rest break shall be considered taken for the purposes of the minimum wage act as defined by chapter 49.46 RCW~~)) (as recodified by this act).

(2) The employer shall provide a mechanism to record when an employee misses a meal or rest period and maintain these records.

(3) For purposes of this section, the following terms have the following meanings:

(a) "Employee" means a person who:

(i) Is employed by ((~~a health care facility~~)) an employer;

(ii) Is involved in direct patient care activities or clinical services; and

(iii) Receives an hourly wage or is covered by a collective bargaining agreement((~~; and~~

~~(iv) Is a licensed practical nurse or registered nurse licensed under chapter 18.79 RCW, a surgical technologist registered under chapter 18.215 RCW, a diagnostic radiologic technologist or cardiovascular invasive specialist certified under chapter 18.84 RCW, a respiratory care practitioner licensed under chapter 18.89 RCW, or a nursing assistant-certified as defined in RCW 18.88A.020~~)).

(b) "Employer" means hospitals licensed under chapter 70.41 RCW((~~, except that the following hospitals are excluded until July 1, 2021:~~

~~(i) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;~~

~~(ii) Hospitals with fewer than twenty-five acute care beds in operation; and~~

~~(iii) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision~~)).

**Sec.**  RCW 49.28.130 and 2019 c 296 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 49.28.140 and 49.28.150 (as recodified by this act) unless the context clearly requires otherwise.

(1)(a) "Employee" means a person who:

(i) Is employed by a health care facility;

(ii) Is involved in direct patient care activities or clinical services; and

(iii) Receives an hourly wage or is covered by a collective bargaining agreement((~~; and~~

~~(iv) Is either:~~

~~(A) A licensed practical nurse or registered nurse licensed under chapter 18.79 RCW; or~~

~~(B) Beginning July 1, 2020, a surgical technologist registered under chapter 18.215 RCW, a diagnostic radiologic technologist or cardiovascular invasive specialist certified under chapter 18.84 RCW, a respiratory care practitioner licensed under chapter 18.89 RCW, or a nursing assistant-certified as defined in RCW 18.88A.020~~)).

(b) "Employee" does not mean a person who is both:

(i) ((~~Is employed~~)) Employed by a health care facility as defined in subsection (3)(a)(v) of this section; and

(ii) ((~~Is a~~)) A surgical technologist registered under chapter 18.215 RCW, a diagnostic radiologic technologist or cardiovascular invasive specialist certified under chapter 18.84 RCW, a respiratory care practitioner licensed under chapter 18.89 RCW, or a certified nursing assistant as defined in RCW 18.88A.020.

(2) "Employer" means an individual, partnership, association, corporation, the state, a political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3)(a) "Health care facility" means the following facilities, or any part of the facility, including such facilities if owned and operated by a political subdivision or instrumentality of the state, that operate on a twenty-four hours per day, seven days per week basis:

(i) Hospices licensed under chapter 70.127 RCW;

(ii) Hospitals licensed under chapter 70.41 RCW((~~, except that until July 1, 2021, the provisions of section 3, chapter 296, Laws of 2019 do not apply to:~~

~~(A) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;~~

~~(B) Hospitals with fewer than twenty-five acute care beds in operation; and~~

~~(C) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision~~));

(iii) Rural health care facilities as defined in RCW 70.175.020;

(iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

(v) Facilities owned and operated by the department of corrections or by a governing unit as defined in RCW 70.48.020 in a correctional institution as defined in RCW 9.94.049 that provide health care services.

(b) If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7) "Unforeseeable emergent circumstance" means (a) any unforeseen declared national, state, or municipal emergency; or (b) when a health care facility disaster plan is activated((~~; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services~~)).

**Sec.**  RCW 49.28.140 and 2019 c 296 s 3 are each amended to read as follows:

(1) No employee of a health care facility may be required to work overtime. Attempts to compel or force employees to work overtime are contrary to public policy, and any such requirement contained in a contract, agreement, or understanding is void.

(2) The acceptance by any employee of overtime is strictly voluntary, and the refusal of an employee to accept such overtime work is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

(3) This section does not apply to overtime work that occurs:

(a) Because of any unforeseeable emergent circumstance;

(b) Because of prescheduled on-call time not to exceed more than 20 hours per week, subject to the following:

(i) Mandatory prescheduled on-call time may not be used in lieu of scheduling employees to work regularly scheduled shifts when a staffing plan indicates the need for a scheduled shift; and

(ii) Mandatory prescheduled on-call time may not be used to address regular changes in patient census or acuity or expected increases in the number of employees not reporting for predetermined scheduled shifts;

(c) When the employer documents that the employer has used reasonable efforts to obtain and retain staffing. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages that persist longer than three months; or

(d) When an employee is required to work overtime to complete a patient care procedure already in progress where the absence of the employee could have an adverse effect on the patient.

(4) An employee accepting overtime who works more than twelve consecutive hours shall be provided the option to have at least eight consecutive hours of uninterrupted time off from work following the time worked.

**Sec.**  RCW 49.28.150 and 2002 c 112 s 4 are each amended to read as follows:

The department of labor and industries shall investigate complaints of violations of RCW 49.28.140 (as recodified by this act) as provided under section 10 of this act. ((~~A violation of RCW 49.28.140 is a class 1 civil infraction in accordance with chapter 7.80 RCW, except that the maximum penalty is one thousand dollars for each infraction up to three infractions. If there are four or more violations of RCW 49.28.140 for a health care facility, the employer is subject to a fine of two thousand five hundred dollars for the fourth violation, and five thousand dollars for each subsequent violation. The department of labor and industries is authorized to issue and enforce civil infractions according to chapter 7.80 RCW.~~))

NEW SECTION. **Sec.**  (1)(a) If a complainant files a complaint with the department alleging a violation of this chapter, the department shall investigate the complaint.

(b) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the complainant filed the complaint.

(c) Upon the investigation of a complaint, the department shall issue either a citation and notice of assessment or a closure letter, within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(d) The department shall send a citation and notice of assessment or the closure letter to both the employer and the complainant by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the complainant's allegation cannot be substantiated, the department shall issue a closure letter to the complainant and the employer detailing such finding.

(3)(a) If the department finds a violation of this chapter, the department shall order the employer to pay the department a civil penalty.

(b) Except as provided otherwise in this chapter, the maximum penalty is $1,000 for each violation up to three violations. If there are four or more violations of this chapter for a health care facility, the employer is subject to a civil penalty of $2,500 for the fourth violation, and $5,000 for each subsequent violation.

(4) The department may, at any time, waive or reduce a civil penalty assessed under this section if the director of the department determines that the employer has taken corrective action to resolve the violation.

(5) The department shall deposit all civil penalties paid under this chapter in the supplemental pension fund established under RCW 51.44.033.

NEW SECTION. **Sec.**  (1) A person, firm, or corporation aggrieved by a citation and notice of assessment by the department under this chapter may appeal the citation and notice of assessment to the director of the department by filing a notice of appeal with the director within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director of the department under this section shall stay the effectiveness of the citation and notice of assessment pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director of the department shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director of the department shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION. **Sec.**  Collections of unpaid citations assessing civil penalties will be pursuant to RCW 49.48.086.

NEW SECTION. **Sec.**  (1) Any employee employed by a health care facility covered by RCW 49.12.480, 49.28.130, and 49.28.140 (as recodified by this act), and any direct care nurse or direct care nursing assistant-certified covered by section 2 of this act, or any labor organization that is the exclusive bargaining representative of any such persons, alleging a violation of this chapter may bring a civil action against the health care facility or hospital.

(2) A health care facility's or hospital's violation of this chapter or rules adopted under this chapter constitutes a concrete and particularized injury in fact to employees employed by the health care facility.

(3) The court may award to a prevailing plaintiff:

(a) An amount not less than $100 and not greater than $10,000 per violation per day;

(b) Reasonable attorneys' fees and litigation costs;

(c) Any other relief, including equitable and declaratory relief, that the court deems appropriate.

(4) The remedy under this section is in addition to any administrative enforcement under this chapter.

NEW SECTION. **Sec.**  The department may adopt and implement rules to carry out and enforce the provisions of this chapter, including but not limited to protecting employees from retaliation for filing complaints under this chapter.

NEW SECTION. **Sec.**  2017 c 249 s 4 (uncodified) is repealed.

NEW SECTION. **Sec.**  Sections 2, 5, and 10 through 14 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. **Sec.**  RCW 70.41.410, 70.41.420, and 70.41.425 are each recodified as sections in chapter 49.--- RCW (the new chapter created in section 16 of this act).

NEW SECTION. **Sec.**  RCW 49.12.480, 49.28.130, 49.28.140, and 49.28.150 are each recodified as sections in chapter 49.--- RCW (the new chapter created in section 16 of this act).

NEW SECTION. **Sec.**  This act takes effect January 1, 2023.

**--- END ---**